

(4)(i) If a student or parent modifies an authorization, the modification takes effect on the date the institution receives the modification notice.

(ii) If a student or parent cancels an authorization to use title IV, HEA program funds to pay for authorized charges under paragraph (a)(4) of this section, the institution may use title IV, HEA program funds to pay only those authorized charges incurred by the student before the institution received the notice.

(iii) If a student or parent cancels an authorization to hold title IV, HEA program funds under paragraph (b)(1)(ii) of this section, the institution must pay those funds directly to the student or parent as soon as possible but no later than 14 days after the institution receives that notice.

(5) If an institution holds excess student funds under paragraph (b)(1)(ii) of this section, the institution must—

(i) Identify the amount of funds the institution holds for each student or parent in a subsidiary ledger account designed for that purpose;

(ii) Maintain, at all times, cash in its depository account in an amount at least equal to the amount of funds the institution holds on behalf of the student or the parent; and

(iii) Notwithstanding any authorization obtained by the institution under this paragraph, pay any remaining balance on loan funds by the end of the loan period and any remaining other title IV, HEA program funds by the end of the last payment period in the award year for which they were awarded.

[80 FR 67194, Oct. 30, 2015, as amended at 81 FR 20251, Apr. 7, 2016]

§ 668.166 Excess cash.

(a) *General.* The Secretary considers excess cash to be any amount of title IV, HEA program funds, other than Federal Perkins Loan program funds, that an institution does not disburse to students by the end of the third business day following the date the institution—

(1) Received those funds from the Secretary; or

(2) Deposited or transferred to its depository account previously disbursed title IV, HEA program funds, such as

those resulting from award adjustments, recoveries, or cancellations.

(b) *Excess cash tolerance.* An institution may maintain for up to seven days an amount of excess cash that does not exceed one percent of the total amount of funds the institution drew down in the prior award year. The institution must return immediately to the Secretary any amount of excess cash over the one-percent tolerance and any amount of excess cash remaining in its account after the seven-day tolerance period.

(c) *Consequences for maintaining excess cash.* Upon a finding that an institution maintained excess cash for any amount or time over that allowed in the tolerance provisions in paragraph (b) of this section, the actions the Secretary may take include, but are not limited to—

(1) Requiring the institution to reimburse the Secretary for the costs the Federal government incurred in providing that excess cash to the institution; and

(2) Providing funds to the institution under the reimbursement payment method or heightened cash monitoring payment method described in § 668.162(c) and (d), respectively.

[80 FR 67194, Oct. 30, 2015, as amended at 81 FR 20251, Apr. 7, 2016]

§ 668.167 Severability.

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the section or the application of its provisions to any person, act, or practice shall not be affected thereby.

Subpart L—Financial Responsibility

SOURCE: 62 FR 62877, Nov. 25, 1997, unless otherwise noted.

§ 668.171 General.

(a) *Purpose.* To begin and to continue to participate in any title IV, HEA program, an institution must demonstrate to the Secretary that it is financially responsible under the standards established in this subpart. As provided under section 498(c)(1) of the HEA, the Secretary determines whether an institution is financially responsible based on the institution's ability to—

(1) Provide the services described in its official publications and statements;

(2) Meet all of its financial obligations; and

(3) Provide the administrative resources necessary to comply with title IV, HEA program requirements.

(b) *General standards of financial responsibility.* Except as provided under paragraphs (c), (d), and (h) of this section, the Secretary considers an institution to be financially responsible if the Secretary determines that—

(1) The institution's Equity, Primary Reserve, and Net Income ratios yield a composite score of at least 1.5, as provided under § 668.172 and appendices A and B to this subpart;

(2) The institution has sufficient cash reserves to make required returns of unearned title IV, HEA program funds, as provided under § 668.173;

(3) The institution is able to meet all of its financial obligations and provide the administrative resources necessary to comply with title IV, HEA program requirements. An institution is not deemed able to meet its financial or administrative obligations if—

(i) It fails to make refunds under its refund policy or return title IV, HEA program funds for which it is responsible under § 668.22;

(ii) It fails to make repayments to the Secretary for any debt or liability arising from the institution's participation in the title IV, HEA programs; or

(iii) It is subject to an action or event described in paragraph (c) of this section (mandatory triggering events), or an action or event that the Secretary determines is likely to have a material adverse effect on the financial condition of the institution under paragraph (d) of this section (discretionary triggering events); and

(4) The institution or persons affiliated with the institution are not subject to a condition of past performance under § 668.174(a) or (b).

(c) *Mandatory triggering events.* An institution is not able to meet its financial or administrative obligations under paragraph (b)(3)(iii) of this section if—

(1) After the end of the fiscal year for which the Secretary has most recently

calculated an institution's composite score, one or more of the following occurs:

(i)(A) The institution incurs a liability from a settlement, final judgment, or final determination arising from an administrative or judicial action or proceeding initiated by a Federal or State entity. A determination arising from an administrative action or proceeding initiated by a Federal or State entity means the determination was made only after an institution had notice and an opportunity to submit its position before a hearing official. A final determination arising from an administrative action or proceeding initiated by a Federal entity includes a final determination arising from any administrative action or proceeding initiated by the Secretary. For purposes of this section, the liability is the amount stated in the final judgment or final determination. A judgment or determination becomes final when the institution does not appeal or when the judgment or determination is not subject to further appeal; or

(B) For a proprietary institution whose composite score is less than 1.5, there is a withdrawal of owner's equity from the institution by any means (*e.g.*, a capital distribution that is the equivalent of wages in a sole proprietorship or partnership, a distribution of dividends or return of capital, or a related party receivable), unless the withdrawal is a transfer to an entity included in the affiliated entity group on whose basis the institution's composite score was calculated; and

(ii) As a result of that liability or withdrawal, the institution's recalculated composite score is less than 1.0, as determined by the Secretary under paragraph (e) of this section.

(2) For a publicly traded institution—

(i) The U.S. Securities and Exchange Commission (SEC) issues an order suspending or revoking the registration of the institution's securities pursuant to Section 12(j) of the Securities and Exchange Act of 1934 (the "Exchange Act") or suspends trading of the institution's securities on any national securities exchange pursuant to Section 12(k) of the Exchange Act; or

(ii) The national securities exchange on which the institution's securities

are traded notifies the institution that it is not in compliance with the exchange's listing requirements and, as a result, the institution's securities are delisted, either voluntarily or involuntarily, pursuant to the rules of the relevant national securities exchange.

(iii) The SEC is not in timely receipt of a required report and did not issue an extension to file the report.

(3) For the period described in (c)(1) of this section, when the institution is subject to two or more discretionary triggering events, as defined in paragraph (d) of this section, those events become mandatory triggering events, unless a triggering event is resolved before any subsequent event(s) occurs.

(d) *Discretionary triggering events.* The Secretary may determine that an institution is not able to meet its financial or administrative obligations under paragraph (b)(3)(iii) of this section if any of the following events is likely to have a material adverse effect on the financial condition of the institution—

(1) The accrediting agency for the institution issued an order, such as a show cause order or similar action, that, if not satisfied, could result in the withdrawal, revocation or suspension of institutional accreditation for failing to meet one or more of the agency's standards;

(2)(i) The institution violated a provision or requirement in a security or loan agreement with a creditor; and

(ii) As provided under the terms of that security or loan agreement, a monetary or nonmonetary default or delinquency event occurs, or other events occur, that trigger or enable the creditor to require or impose on the institution, an increase in collateral, a change in contractual obligations, an increase in interest rates or payments, or other sanctions, penalties, or fees;

(3) The institution's State licensing or authorizing agency notified the institution that it has violated a State licensing or authorizing agency requirement and that the agency intends to withdraw or terminate the institution's licensure or authorization if the institution does not take the steps necessary to come into compliance with that requirement;

(4) For its most recently completed fiscal year, a proprietary institution

did not receive at least 10 percent of its revenue from sources other than title IV, HEA program funds, as provided under § 668.28(c);

(5) As calculated by the Secretary, the institution has high annual drop-out rates; or

(6) The institution's two most recent official cohort default rates are 30 percent or greater, as determined under subpart N of this part, unless—

(i) The institution files a challenge, request for adjustment, or appeal under that subpart with respect to its rates for one or both of those fiscal years; and

(ii) That challenge, request, or appeal remains pending, results in reducing below 30 percent the official cohort default rate for either or both of those years, or precludes the rates from either or both years from resulting in a loss of eligibility or provisional certification.

(e) *Recalculating the composite score.* The Secretary recalculates an institution's most recent composite score by recognizing the actual amount of the liability, or cumulative liabilities, incurred by an institution under paragraph (c)(1)(i)(A) of this section as an expense or accounting for the actual withdrawal, or cumulative withdrawals, of owner's equity under paragraph (c)(1)(i)(B) of this section as a reduction in equity, and accounts for that expense or withdrawal by—

(1) For liabilities incurred by a proprietary institution—

(i) For the primary reserve ratio, increasing expenses and decreasing adjusted equity by that amount;

(ii) For the equity ratio, decreasing modified equity by that amount; and

(iii) For the net income ratio, decreasing income before taxes by that amount;

(2) For liabilities incurred by a non-profit institution—

(i) For the primary reserve ratio, increasing expenses and decreasing expendable net assets by that amount;

(ii) For the equity ratio, decreasing modified net assets by that amount; and

(iii) For the net income ratio, decreasing change in net assets without donor restrictions by that amount; and

(3) For the amount of owner's equity withdrawn from a proprietary institution—

(i) For the primary reserve ratio, decreasing adjusted equity by that amount; and

(ii) For the equity ratio, decreasing modified equity by that amount.

(f) *Reporting requirements.* (1) In accordance with procedures established by the Secretary, an institution must notify the Secretary of the following actions or events—

(i) For a liability incurred under paragraph (c)(1)(i)(A) of this section, no later than 10 days after the date of written notification to the institution of the final judgment or final determination;

(ii) For a withdrawal of owner's equity described in paragraph (c)(1)(i)(B) of this section—

(A) For a capital distribution that is the equivalent of wages in a sole proprietorship or partnership, no later than 10 days after the date the Secretary notifies the institution that its composite score is less than 1.5. In response to that notice, the institution must report the total amount of the wage-equivalent distributions it made during its prior fiscal year and any distributions that were made to pay any taxes related to the operation of the institution. During its current fiscal year and the first six months of its subsequent fiscal year (18-month period), the institution is not required to report any distributions to the Secretary, provided that the institution does not make wage-equivalent distributions that exceed 150 percent of the total amount of wage-equivalent distributions it made during its prior fiscal year, less any distributions that were made to pay any taxes related to the operation of the institution. However, if the institution makes wage-equivalent distributions that exceed 150 percent of the total amount of wage-equivalent distributions it made during its prior fiscal year less any distributions that were made to pay any taxes related to the operation of the institution at any time during the 18-month period, it must report each of those distributions no later than 10 days after they are made, and the Secretary recalculates the institution's composite

score based on the cumulative amount of the distributions made at that time;

(B) For a distribution of dividends or return of capital, no later than 10 days after the dividends are declared or the amount of return of capital is approved; or

(C) For a related party receivable, not later than 10 days after that receivable occurs;

(iii) For the provisions relating to a publicly traded institution under paragraph (c)(2) of this section, no later than 10 days after the date that—

(A) The SEC issues an order suspending or revoking the registration of the institution's securities pursuant to Section 12(j) of the Exchange Act or suspends trading of the institution's securities on any national securities exchange pursuant to Section 12(k) of the Exchange Act; or

(B) The national securities exchange on which the institution's securities are traded involuntarily delists its securities, or the institution voluntarily delists its securities, pursuant to the rules of the relevant national securities exchange;

(iv) For an action under paragraph (d)(1) of this section, 10 days after the date on which the institution is notified by its accrediting agency of that action;

(v) For the loan agreement provisions in paragraph (d)(2) of this section, 10 days after a loan violation occurs, the creditor waives the violation, or the creditor imposes sanctions or penalties in exchange or as a result of granting the waiver;

(vi) For a State agency notice relating to terminating an institution's licensure or authorization under paragraph (d)(3) of this section, 10 days after the date on which the institution receives that notice; and

(vii) For the non-title IV revenue provision in paragraph (d)(4) of this section, no later than 45 days after the end of the institution's fiscal year, as provided in § 668.28(c)(3).

(2) The Secretary may take an administrative action under paragraph (i) of this section against an institution, or determine that the institution is not financially responsible, if it fails to provide timely notice to the Secretary as provided under paragraph (f)(1) of

this section, or fails to respond, within the timeframe specified by the Secretary, to any determination made, or request for information, by the Secretary under paragraph (f)(3) of this section.

(3)(i) In its notice to the Secretary under this paragraph, or in its response to a preliminary determination by the Secretary that the institution is not financially responsible because of a triggering event under paragraph (c) or (d) of this section, in accordance with procedures established by the Secretary, the institution may—

(A) Demonstrate that the reported withdrawal of owner's equity under paragraph (c)(1)(i)(B) of this section was used exclusively to meet tax liabilities of the institution or its owners for income derived from the institution;

(B) Show that the creditor waived a violation of a loan agreement under paragraph (d)(2) of this section. However, if the creditor imposes additional constraints or requirements as a condition of waiving the violation, or imposes penalties or requirements under paragraph (d)(2)(ii) of this section, the institution must identify and describe those penalties, constraints, or requirements and demonstrate that complying with those actions will not adversely affect the institution's ability to meet its financial obligations;

(C) Show that the triggering event has been resolved, or demonstrate that the institution has insurance that will cover all or part of the liabilities that arise under paragraph (c)(1)(i)(A) of this section; or

(D) Explain or provide information about the conditions or circumstances that precipitated a triggering event under paragraph (c) or (d) of this section that demonstrates that the triggering event has not or will not have a material adverse effect on the institution.

(ii) The Secretary will consider the information provided by the institution in determining whether to issue a final determination that the institution is not financially responsible.

(g) *Public institutions.* (1) The Secretary considers a domestic public institution to be financially responsible if the institution—

(i)(A) Notifies the Secretary that it is designated as a public institution by the State, local, or municipal government entity, tribal authority, or other government entity that has the legal authority to make that designation; and

(B) Provides a letter from an official of that State or other government entity confirming that the institution is a public institution; and

(ii) Is not subject to a condition of past performance under § 668.174.

(2) The Secretary considers a foreign public institution to be financially responsible if the institution—

(i)(A) Notifies the Secretary that it is designated as a public institution by the country or other government entity that has the legal authority to make that designation; and

(B) Provides documentation from an official of that country or other government entity confirming that the institution is a public institution and is backed by the full faith and credit of the country or other government entity; and

(ii) Is not subject to a condition of past performance under § 668.174.

(h) *Audit opinions and disclosures.* Even if an institution satisfies all of the general standards of financial responsibility under paragraph (b) of this section, the Secretary does not consider the institution to be financially responsible if, in the institution's audited financial statements, the opinion expressed by the auditor was an adverse, qualified, or disclaimed opinion, or the financial statements contain a disclosure in the notes to the financial statements that there is substantial doubt about the institution's ability to continue as a going concern as required by accounting standards, unless the Secretary determines that a qualified or disclaimed opinion does not have a significant bearing on the institution's financial condition, or that the substantial doubt about the institution's ability to continue as going concern has been alleviated.

(i) *Administrative actions.* If the Secretary determines that an institution is not financially responsible under the standards and provisions of this section or under an alternative standard in § 668.175, or the institution does not

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submit its financial and compliance audits by the date and in the manner required under § 668.23, the Secretary may—

(1) Initiate an action under subpart G of this part to fine the institution, or limit, suspend, or terminate the institution's participation in the title IV, HEA programs;

(2) For an institution that is provisionally certified, take an action against the institution under the procedures established in § 668.13(d); or

(3) Deny the institution's application for certification or recertification to participate in the title IV, HEA programs.

[84 FR 49911, Sept. 23, 2019, as amended at 85 FR 54818, Sept. 2, 2020]

§ 668.172 Financial ratios.

(a) *Appendices A and B, ratio methodology.* As provided under appendices A and B to this subpart, the Secretary

determines an institution's composite score by—

(1) Calculating the result of its Primary Reserve, Equity, and Net Income ratios, as described under paragraph (b) of this section;

(2) Calculating the strength factor score for each of those ratios by using the corresponding algorithm;

(3) Calculating the weighted score for each ratio by multiplying the strength factor score by its corresponding weighting percentage;

(4) Summing the resulting weighted scores to arrive at the composite score; and

(5) Rounding the composite score to one digit after the decimal point.

(b) *Ratios.* The Primary Reserve, Equity, and Net Income ratios are defined under appendix A for proprietary institutions, and under appendix B for private non-profit institutions.

(1) The ratios for proprietary institutions are:

For proprietary institutions:

$$\begin{aligned}\text{Primary Reserve ratio} &= \frac{\text{Adjusted Equity}}{\text{Total Expenses}} \\ \text{Equity ratio} &= \frac{\text{Modified Equity}}{\text{Modified Assets}} \\ \text{Net Income ratio} &= \frac{\text{Income Before Taxes}}{\text{Total Revenues}}\end{aligned}$$

(2) The ratios for private non-profit institutions are:

$$\begin{aligned}\text{Primary Reserve ratio} &= \frac{\text{Expendable Net Assets}}{\text{Total Expenses}} \\ \text{Equity Ratio} &= \frac{\text{Modified Net Assets}}{\text{Modified Assets}} \\ \text{Net Income ratio} &= \frac{\text{Change in Unrestricted Net Assets}}{\text{Total Unrestricted Revenues}}\end{aligned}$$

(c) *Excluded items.* In calculating an institution's ratios, the Secretary—

(1) Generally excludes extraordinary gains or losses, income or losses from discontinued operations, prior period